IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

SUNDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

WP(C).No. 10255 of 2005(U)

PETITIONER:

M.J.GEORGE, S/O.JOSEPH,
MANASSERIL HOUSE,
THALAYOLAPARAMBU,KOTTAYAM DISTRICT.

BY ADV. SRI.P.P.JACOB

RESPONDENTS:

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1. THE SECRETARY TO GOVERNMENT,
LOCAL ADMINISTRATION/LOCAL BODIES,
SECRETARIAT, TRIVADNRUM.

2. THE ASSISTANT ENGINEER,
LSGD SECTION, VALLUR GRAMA PANCHAYATH OFFICE,
VELLOOR, KOTTAYAM.

3. ABRAHAM PETER, SECRETARY,
VELLOOR GRAMA PANCHAYTH,
VELOOR, KOTTAYAM.

4. VELLOOR GRAMA PANCHAYATH,
VELLOOR KOTTAYAM, REP. BY ITS SECRETARY

5. THE ASST. EXECUTIVE ENGINEER,
LSGD SUB DIVISION, KADATHURUTHY.
(ADDL. R5 IS IMPLEADED AS PER ORDER IN I.A.18777/05
DATED 19.12.2006)

BY GOVERNMENT PLEADER SRI.K.J.MOHEMMED ANSAR
SRI.P.G.PARAMESWARA PANICKER (SR.)
SRI.P.GOPAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.10255/2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ESTIMATE OF THE CONTRACT WORK CONDUCTED BY THE PETITIONER

EXT.P2: COPY OF THE SELECTION NOTICE ISSUED BY 4TH RESPONDENT TO THE PETITIONER DATED 1.12.2004

EXT.P3: COPY OF TH AGREEMENT EXECUTED BY THE 4TH RESPONENT AND THE PETITIONER DATED 3.2.2004

EXT.P4: COPY OF THE RELEVANT PORTION OF THE DESCRIPTION OF WORK VIDE AGREEMENT 4/04-05 DATED 3.2.2004

EXT.P5: COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT TO THE ASSISTANT EXECUTIVE ENGINEER DATED 9.3.2005

EXT.P6; COPY OF THE LETTER SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT DATED 14.3.2005

EXT.P7: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENTS DATED 23.3.2005.

EXT.P8: COPY OF THE LETTER ISSUED BY PERSON P.K.VIDYADARAN TO THE PETITIONER DATED NIL.

EXT.P8: COPY OF THE AGREEMENT OF SCHEDULE EXECUATED BY A.K.RAVEENDRAN NAIR, CONTRACTOR WITH THE THALAYOLAPARAMBU GRAMA PANCHAYATH.

EXT.P9: COPY OF THE AMOUNT OF WORK EXECUTED BY CONTRACTOR FORWARADED BY 2ND RESPONDENT TO THE SECRETARY, THALAYOLAPARAMBU GRAMA PANCHAYATH.

EXT.P10: COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT TO THE SECRETARY THALAYOLA PARAMBU GRAMA PANCHAYATH.

RESPONDENTS EXHIBITS:

EXT.R4(A): COPY OF CIRCULAR ISSUED BY THE GOVERNMENT DATED 3.6.2004.

EXT.R4(B): COPY OF THE LETTER DATED 9.3.2005.

EXT.R4(C): COPY OF THE LETTER OF THE PLANNING BOARD DATED 26.3.2005

EXT.R4(D); COPY OF THE COMPLAINT DATED 9.3.2005

EXT.R4(E): COPY OF THE LETTER DATED 27.7.2005

PIUS C.KURIAKOSE, J.

W.P.(C)NO. 10255 of 2005

Dated this 1st day of January , 2007

JUDGMENT

The petitioner who was the contractor to the 4th respondent Panchayat for carrying out the work of construction of Poovathinchuvadu – Puthenmana road is aggrieved in that the Panchayat is not prepared to release the entire amount of Rs.3,90,000/- mentioned in Ext.P1 estimate in settlement of his dues.

2. Detailed counter affidavits have been filed by the Panchayat as well as by the 2nd respondent Assistant Engineer and the additional 5th respondent Asst.Executive Engineer. The issue is whether the petitioner is entitled for payment of the sum of Rs.85,116/- which is claimed by way of excess cost of bitumen which was purchased by the petitioner from the open market. The contention which is prominently raised through the counter affidavits is that the petitioner will not be entitled for the benefit of Ext.R4(a) Circular issued by the Government which alone will enable the contractors to claim the difference between the

actual price of the bitumen and the schedule rate for bitumen. The Panchayat contends that Ext.R4(a) is a Circular, which enables the local authorities to purchase bitumen directly from the public sector companies if they decide to do so. In the instant case, the 4th respondent has not passed any resolution for purchasing bitumen directly from the public sector undertakings. It is also contended that the tender notice does not contain a clause to the effect that it will be the obligation of the local authority to purchase bitumen directly from the companies as is required under Ext.R4 (a).

3. Very elaborate submissions were addressed before me by Sri.P.P.Jacob, the learned counsel for the petitioner, who would take me through the relevant pleadings and also through the relevant Rules in the Kerala Panchayat Raj Execution of Public Works Rules. The stand taken by the Panchayat according to the learned counsel is too technical and unbecoming of a public authority. The submissions were very vehemently resisted by Sri.P.Gopal, the learned Standing Counsel for the Panchayat and also by Sri.Mohammed Ansar, the learned Government Pleader. Sri. Gopal would place strong

reliance on the decisions of the apex court in **State of Jammu and Kashmir v. Ghulam Mohd. Dar and Another(2004) 12 Supreme Court 327) and National Highways Authority of India v. Ganga Enterprises and another (2003) 7 Supreme Court Cases 410).** Both Sri.Gopal and the learned Government Pleader would submit that the claim of the petitioner that the work was executed by him to the complete satisfaction of the engineer is not correct. Complaints have been raised regarding the quality of the work and proceedings are going to be initiated against the petitioner in that context.

4. I do find some force in the submissions of Sri.Jacob that the stand taken by the authority is technical and that it may be difficult for the Panchayat to avoid the liability to pay the difference in the price of bitumen in view of Ext.P1 estimate which was checked and approved by the Engineers of the L.S.G. Department and also Ext.P3 agreement which at clause (1) clearly mentions that the amount of Rs.3,90,000/- includes the difference in the price of bitumen. However, I do not think that this court will be justified in invoking its discretionary jurisdiction under Article 226 of the Constitution in view of the

position, that complaints have been raised by the inhabitants of the Panchayat regarding the quality of the work executed by the petitioner. The petitioner must seek his remedies from the Civil Court. Hence I relegate the petitioner to the Civil Court and dispose of this writ petition accordingly. If the petitioner files a suit within 30 days of his receiving a copy of this judgment or within 90 days from today whichever is later that court will exclude the time taken by the petitioner for the institution and conduct of the writ petition before this court and time till the filing of the suit for the purposes of Section 14 of the Indian limitation Act.

PIUS C.KURIAKOSE
Judge

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